

ESTTA Tracking number: **ESTTA542443**

Filing date: **06/08/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Dermatology Rx LLC
Granted to Date of previous extension	06/09/2013
Address	6280 S.W. 72nd St.Suite 500 Miami, FL 33143 UNITED STATES

Attorney information	Mark M. Zylka Cuenot, Forsythe & Kim 3319 State Road 7, Suite 301 Wellington, FL 33449 UNITED STATES mark.zylka@iplawpro.com, ptomail@iplawpro.com Phone:5612146166
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Applicant Information

Application No	85665399	Publication date	12/11/2012
Opposition Filing Date	06/08/2013	Opposition Period Ends	06/09/2013
Applicant	Grayson Beauty Advances LLC 30728 Paseo Elegancia San Juan Capistrano, CA 92675 UNITED STATES		

Goods/Services Affected by Opposition

Class 003.

All goods and services in the class are opposed, namely: After sun creams; After-shave creams; Aftershave moisturising cream; Age spot reducing creams; Anti-aging cream; Anti-aging cream containing a retinoic ingredient not for medical purposes; Anti-aging creams; Anti-freckle creams; Anti-wrinkle cream; Anti-wrinkle creams; Antibacterial skin soaps; Aromatic body care products, namely, body lotion, shower gel, cuticle cream, shampoo, conditioner, non-medicated lip balm, soap, body polish, body and foot scrub and non-medicated foot cream; Aromatic preparations, namely, lotions; Bath cream; Beauty creams; Beauty creams for body care; Body cream; Body cream soap; Body creams; Body mask cream; Boot cream; Cleansing creams; Cloths or tissues impregnated with a skin cleanser; Cold cream; Cold creams; Concealers for face; Cosmetic creams; Cosmetic creams for skin care; Cosmetic hand creams; Cosmetic massage creams; Cosmetic nourishing creams; Cosmetic preparations for protecting the skin from the sun's rays; Cosmetic preparations for skin care; Cosmetic preparations for skin renewal; Cosmetic preparations, namely, firming creams; Cosmetic preparations, namely, skin balsams; Cosmetic products in the form of aerosols for skin care; Cosmetic products taken orally, namely, pills that induce bronzing of the skin; Cosmetic skin fresheners; Cream soaps; Creams for cellulite reduction; Creams for leather; Cuticle cream; Decorative transfers and skin jewels for cosmetic purposes; Depilatory creams; Exfoliant creams; Exfoliants for skin; Eye cream; Face and body beauty creams; Face and body creams; Face creams;

Face creams and cleansers containing benzoyl peroxide for cosmetic purposes; Face creams for cosmetic use; Facial cream; Facial creams; Fair complexion cream; Fragranced skin care preparations, namely, skin moisturizers; Hair care creams; Hair creams; Hair products, namely, thickening control creams; Hair removing cream; Hand cream; Hand creams; Lip cream; Lotions for skin; Make-up removing milk, gel, lotions and creams; Massage creams; Moisturizing creams; Moisturizing preparations for the skin; Moisturizing solutions for the skin; Mousse for skin; Nail cream; Natural cocoa butter based personal care products, namely, body lotion, shower gel, soap, body polish, body and foot scrub and non-medicated skin creams; Night cream; Non-medicated balms for use on skin; Non-medicated cleansers for personal use, namely, skin cleansers; Non-medicated cleansers, namely, skin cleansers; Non-medicated cosmetic skin care preparations consisting of organic coconut virgin oil and coconut virgin oil; Non-medicated diaper rash cream; Non-medicated foot cream; Non-medicated preparations all for the care of skin, hair and scalp; Non-medicated scalp treatment cream; Non-medicated serums for use on skin; Non-medicated skin care creams and lotions; Non-medicated skin care preparation, namely, body mist; Non-medicated skin care preparations; Non-medicated skin care preparations, namely, creams, lotions, gels, toners, cleaners and peels; Non-medicated skin care preparations, namely, creams and lotions; Non-medicated skin cream for general skin rash and irritation resulting from skin shingles; Non-medicated skin creams; Non-medicated skin creams with essential oils for use in aromatherapy; Non-medicated skin toners; Non-medicated stimulating lotions for the skin; Non-medicated skin care preparations; Patches containing sun screen and sun block for use on the skin; Perfumed creams; Pre-shave creams; Preservative creams for leather; Retinol cream for cosmetic purposes; Scented body lotions and creams; Seawater-based skin care preparations for skin renewal; Shave creams; Shaving cream; Shaving creams; Shoe and boot cream; Shoe cream; Shoe creams and polishes; Shoe polish and creams; Shower creams; Skin abrasive preparations; Skin and body topical lotions, creams and oils for cosmetic use; Skin bronzer; Skin bronzing creams; Skin care preparation, namely, body polish; Skin care preparations, namely, body balm; Skin care preparations, namely, chemical peels for skin; Skin care preparations, namely, fruit acid peels for skin; Skin care preparations, namely, skin peels; Skin care products, namely, non-medicated skin serum; Skin clarifiers; Skin cleanser in liquid spray form for use as a baby wipe alternative; Skin cleansers; Skin cleansing cream; Skin cleansing lotion; Skin conditioners; Skin conditioning creams for cosmetic purposes; Skin cream; Skin creams; Skin creams in liquid and in solid form; Skin creams in liquid and solid; Skin creams in liquid and solid form; Skin emollients; Skin fresheners; Skin gels for accelerating, enhancing or extending tans; Skin lighteners; Skin lightening creams; Skin lotion; Skin lotions; Skin masks; Skin moisturizer; Skin moisturizer masks; Skin moisturizing gel; Skin polishing rice bran (arai-nuka); Skin soap; Skin texturizers; Skin toners; Skin whitening creams; Skin whitening preparations; Sun creams; Sunscreen cream; Sunscreen creams; Suntan creams; Tanning creams; Tooth whitening creams; Topical herbal cream for firming and enhancing breasts; Topical skin sprays for cosmetic purposes; Vanishing cream; Wipes impregnated with a skin cleanser; Wrinkle removing skin care preparations; Wrinkle resistant cream

Class 005.

All goods and services in the class are opposed, namely: Anti-itch cream; Antibacterial alcohol skin sanitizer gel; Aromatherapy creams for antiaging; Bandages for skin wounds; Corn and callus creams; Cream of tartar for pharmaceutical purposes; Diagnostic test patch for application to the skin for determining allergic reactions; Diagnostic test patch for application to the skin for determining allergies; Face creams and cleansers containing benzoyl peroxide for medical purposes, namely, the treatment of acne; Fecal enzyme inhibiting compositions used as an ingredient in medicated creams, ointments and lotions; Gels, creams and solutions for dermatological use; Herbal anti-itch and sore skin ointment for pets; Herbal topical creams, gels, salves, sprays, powder, balms, liniment and ointments for the relief of aches and pain; Hydrocortisone cream; Kits comprising sanitizer gel, disinfecting wipes, sanitary masks, plastic gloves and hand cream used for germ prevention; Medical cleansers for skin and wounds; Medical preparations, namely, foot, hand and skin creams for diabetics; Medicaments for treating skin disorders; Medicated balms for treatment of skin; Medicated creams for treating dermatological conditions; Medicated lotions for skin; Medicated serums for treatment of skin; Medicated skin care preparations; Medicated skin care preparations, namely, creams, lotions, gels, toners, cleaners and peels; Medicated skin preparation for use in treating skin; Medicinal creams for skin care; Mole skin for use as a medical bandage; Multipurpose medicated antibiotic cream, analgesic balm and mentholated salve; Non-medicated, therapeutic skin creams for the treatment of aging skin; Nutritional supplements for promoting healthy skin; Nutritional supplements in lotion form sold as a component of nutritional skin care products; Orgasm creams;

Pharmaceutical preparation for skin care; Pharmaceutical preparations and substances for the treatment of damaged skin and tissue; Pharmaceutical preparations for skin care; Pharmaceutical preparations for treating skin disorders; Pharmaceutical products and preparations against dry skin caused by pregnancy; Pharmaceutical products and preparations for hydrating the skin during pregnancy; Pharmaceutical products and preparations for preventing skin blemishes during pregnancy; Pharmaceutical products for skin care for animals; Pharmaceutical skin lotions; Preparations for cleansing the skin for medical use; Processed human donor skin for the replacement of soft tissue; Products and preparations for cleansing the skin for medical use; Skin grafts; Skin lubricants for athletes to prevent skin chafing; Sore skin ointment for pets; Sports cream for relief of pain; Topical analgesic creams; Topical preparations, namely, creams and gels for enhancing sexual arousal

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85668917	Application Date	07/04/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ROTATIONAL THERAPY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2011/12/08 First Use In Commerce: 2011/12/08 Acne treatment preparations		

Attachments	8234-0001_NOO.pdf(48642 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Mark M. Zylka/
Name	Mark M. Zylka
Date	06/08/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of U.S. Trademark Application Serial No.: 85/665,399

Mark: Rotation Skin Therapy

Filed: June 29, 2012

Published in the *Official Gazette*: December 11, 2012

Dermatology Rx LLC,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
Grayson Beauty Advances LLC,)	
)	
Applicant)	
)	

NOTICE OF OPPOSITION

Dermatology Rx LLC, a limited liability company of Florida, having a place of business at 6280 S.W. 72 Street, Suite 500, Miami, Florida 33143 (“Dermatology Rx” or “Opposer”), believes it will be damaged by the issuance of a trademark registration to Grayson Beauty Advances LLC, a limited liability company of Bhutan, having a place of business at 30728 Paseo Elegancia, San Juan Capistrano, California 92675 (“Applicant” or “Grayson”), for U.S. Trademark Application No. 85/665,399 for ROTATION SKIN THERAPY and hereby opposes registration under the provisions of 15 U.S.C. §1063 of the Trademark Act of 1946, as amended (the “Lanham Act”). U.S. Trademark Application No. 85/665,399 published for opposition in the Official Gazette on December 11, 2012 and the Trademark Trial and Appeal Board granted Dermatology Rx’s 90 Day and 60 Day Requests for Extension of Time to Oppose, providing a Notice of Opposition submission deadline of June 9, 2013. Accordingly, this Notice of Opposition is timely filed.

As grounds for the opposition, Opposer alleges that:

1. On June 29, 2012, Applicant filed intent-to-use U.S. Trademark Application No. 85/665,399 for ROTATION SKIN THERAPY for “After sun creams; After-shave creams; Aftershave moisturising cream; Age spot reducing creams; Anti-aging cream; Anti-aging cream containing a retinoic ingredient not for medical purposes; Anti-aging creams; Anti-freckle creams; Anti-wrinkle cream; Anti-wrinkle creams; Antibacterial skin soaps; Aromatic body care products, namely, body lotion, shower gel, cuticle cream, shampoo, conditioner, non-medicated lip balm, soap, body polish, body and foot scrub and non-medicated foot cream; Aromatic preparations, namely, lotions; Bath cream; Beauty creams; Beauty creams for body care; Body cream; Body cream soap; Body creams; Body mask cream; Boot cream; Cleansing creams; Cloths or tissues impregnated with a skin cleanser; Cold cream; Cold creams; Concealers for face; Cosmetic creams; Cosmetic creams for skin care; Cosmetic hand creams; Cosmetic massage creams; Cosmetic nourishing creams; Cosmetic preparations for protecting the skin from the sun's rays; Cosmetic preparations for skin care; Cosmetic preparations for skin renewal; Cosmetic preparations, namely, firming creams; Cosmetic preparations, namely, skin balsams; Cosmetic products in the form of aerosols for skin care; Cosmetic products taken orally, namely, pills that induce bronzing of the skin; Cosmetic skin fresheners; Cream soaps; Creams for cellulite reduction; Creams for leather; Cuticle cream; Decorative transfers and skin jewels for cosmetic purposes; Depilatory creams; Exfoliant creams; Exfoliants for skin; Eye cream; Face and body beauty creams; Face and body creams; Face creams; Face creams and cleansers containing benzoyl peroxide for cosmetic purposes; Face creams for cosmetic use; Facial cream; Facial creams; Fair complexion cream; Fragranced skin care preparations, namely, skin

moisturizers; Hair care creams; Hair creams; Hair products, namely, thickening control creams; Hair removing cream; Hand cream; Hand creams; Lip cream; Lotions for skin; Make-up removing milk, gel, lotions and creams; Massage creams; Moisturizing creams; Moisturizing preparations for the skin; Moisturizing solutions for the skin; Mousse for skin; Nail cream; Natural cocoa butter based personal care products, namely, body lotion, shower gel, soap, body polish, body and foot scrub and non-medicated skin creams; Night cream; Non-medicated balms for use on skin; Non-medicated cleansers for personal use, namely, skin cleansers; Non-medicated cleansers, namely, skin cleansers; Nonmedicated cosmetic skin care preparations consisting of organic coconut virgin oil and coconut virgin oil; Non-medicated diaper rash cream; Non-medicated foot cream; Non-medicated preparations all for the care of skin, hair and scalp; Non-medicated scalp treatment cream; Non-medicated serums for use on skin; Non-medicated skin care creams and lotions; Non-medicated skin care preparation, namely, body mist; Non-medicated skin care preparations; Non-medicated skin care preparations, namely, creams, lotions, gels, toners, cleaners and peels; Non-medicated skin care preparations, namely, creams and lotions; Non-medicated skin cream for general skin rash and irritation resulting from skin shingles; Non-medicated skin creams; Non-medicated skin creams with essential oils for use in aromatherapy; Non-medicated skin toners; Non-medicated stimulating lotions for the skin; Non-medicated skin care preparations; Patches containing sun screen and sun block for use on the skin; Perfumed creams; Pre-shave creams; Preservative creams for leather; Retinol cream for cosmetic purposes; Scented body lotions and creams; Seawater-based skin care preparations for skin renewal; Shave creams; Shaving cream; Shaving creams; Shoe and boot cream; Shoe cream; Shoe creams and polishes; Shoe polish and creams; Shower creams; Skin abrasive preparations;

Skin and body topical lotions, creams and oils for cosmetic use; Skin bronzer; Skin bronzing creams; Skin care preparation, namely, body polish; Skin care preparations, namely, body balm; Skin care preparations, namely, chemical peels for skin; Skin care preparations, namely, fruit acid peels for skin; Skin care preparations, namely, skin peels; Skin care products, namely, non-medicated skin serum; Skin clarifiers; Skin cleanser in liquid spray form for use as a baby wipe alternative; Skin cleansers; Skin cleansing cream; Skin cleansing lotion; Skin conditioners; Skin conditioning creams for cosmetic purposes; Skin cream; Skin creams; Skin creams in liquid and in solid form; Skin creams in liquid and solid; Skin creams in liquid and solid form; Skin emollients; Skin fresheners; Skin gels for accelerating, enhancing or extending tans; Skin lighteners; Skin lightening creams; Skin lotion; Skin lotions; Skin masks; Skin moisturizer; Skin moisturizer masks; Skin moisturizing gel; Skin polishing rice bran (arai-nuka); Skin soap; Skin texturizers; Skin toners; Skin whitening creams; Skin whitening preparations; Sun creams; Sunscreen cream; Sunscreen creams; Suntan creams; Tanning creams; Tooth whitening creams; Topical herbal cream for firming and enhancing breasts; Topical skin sprays for cosmetic purposes; Vanishing cream; Wipes impregnated with a skin cleanser; Wrinkle removing skin care preparations; Wrinkle resistant cream” under Section 1(b) of the Lanham Act in International Class 3; and “Anti-itch cream; Antibacterial alcohol skin sanitizer gel; Aromatherapy creams for antiaging; Bandages for skin wounds; Corn and callus creams; Cream of tartar for pharmaceutical purposes; Diagnostic test patch for application to the skin for determining allergic reactions; Diagnostic test patch for application to the skin for determining allergies; Face creams and cleansers containing benzoyl peroxide for medical purposes, namely, the treatment of acne; Fecal enzyme inhibiting compositions used as an ingredient in medicated

creams, ointments and lotions; Gels, creams and solutions for dermatological use; Herbal anti-itch and sore skin ointment for pets; Herbal topical creams, gels, salves, sprays, powder, balms, liniment and ointments for the relief of aches and pain; Hydrocortisone cream; Kits comprising sanitizer gel, disinfecting wipes, sanitary masks, plastic gloves and hand cream used for germ prevention; Medical cleansers for skin and wounds; Medical preparations, namely, foot, hand and skin creams for diabetics; Medicaments for treating skin disorders; Medicated balms for treatment of skin; Medicated creams for treating dermatological conditions; Medicated lotions for skin; Medicated serums for treatment of skin; Medicated skin care preparations; Medicated skin care preparations, namely, creams, lotions, gels, toners, cleaners and peels; Medicated skin preparation for use in treating skin; Medicinal creams for skin care; Mole skin for use as a medical bandage; Multipurpose medicated antibiotic cream, analgesic balm and mentholated salve; Non-medicated, therapeutic skin creams for the treatment of aging skin; Nutritional supplements for promoting healthy skin; Nutritional supplements in lotion form sold as a component of nutritional skin care products; Orgasm creams; Pharmaceutical preparation for skin care; Pharmaceutical preparations and substances for the treatment of damaged skin and tissue; Pharmaceutical preparations for skin care; Pharmaceutical preparations for treating skin disorders; Pharmaceutical products and preparations against dry skin caused by pregnancy; Pharmaceutical products and preparations for hydrating the skin during pregnancy; Pharmaceutical products and preparations for preventing skin blemishes during pregnancy; Pharmaceutical products for skin care for animals; Pharmaceutical skin lotions; Preparations for cleansing the skin for medical use; Processed human donor skin for the replacement of soft tissue; Products and preparations for cleansing the skin for medical use; Skin grafts; Skin

lubricants for athletes to prevent skin chafing; Sore skin ointment for pets; Sports cream for relief of pain; Topical analgesic creams; Topical preparations, namely, creams and gels for enhancing sexual arousal” under Section 1(b) of the Lanham Act in International Class 5 (the “Application”) seeking to obtain registration on the Principal Register.

2. Prior to the June 29, 2012 filing date of Applicant’s intent-to-use Application, Opposer adopted and continuously, without interruption, used its ROTATIONAL THERAPY trademark in connection with acne treatment preparations in interstate commerce by prominently featuring the trademarks on acne treatment preparations and/or containers for acne treatment preparations (the “ROTATIONAL THERAPY Mark”).

3. The ROTATIONAL THERAPY Mark, as used by Dermatology Rx in connection with acne treatment preparations, is inherently distinctive, or in the alternative, the ROTATIONAL THERAPY Mark, as used by Dermatology Rx in connection with acne treatment preparations, acquired distinctiveness prior to the June 29, 2012 filing date of Applicant’s intent-to-use Application. Thus, the Opposer has priority of common law trademark rights in the ROTATIONAL THERAPY Mark.

4. Opposer filed U.S. Trademark Application No. 85/668,917 for ROTATIONAL THERAPY for “acne treatment preparations” in International Class 5. This application is currently suspended until Grayson’s Application is either registered or abandoned, as provided in a suspension notice mailed on October 25, 2012.

5. The ROTATIONAL THERAPY Mark has been displayed on Opposer’s products, and displayed in promotional and advertising materials related thereto, in the United States. As a

consequence, the ROTATIONAL THERAPY Mark is recognized as an indicator of the source of origin for Opposer's goods.

6. The goods set forth in the Application are identical and/or related to those offered by Opposer under the ROTATIONAL THERAPY Mark, or, in the alternative or in addition, are well within Opposer's natural zone of expansion with respect to products and services branded with the ROTATIONAL THERAPY Mark. Furthermore, on information and belief, Applicant's goods are or will be offered to a similar class of consumers who purchase the goods in connection with which Opposer uses its ROTATIONAL THERAPY Mark and are or will be offered through the same channels of trade.

7. The applied-for-mark ROTATION SKIN THERAPY is confusingly similar to the Opposer's ROTATIONAL THERAPY Mark in terms of its sight, sound, meaning and overall commercial impression. As a result, it is likely to cause confusion, mistake, and deception as to an affiliation, connection or association between Opposer and Applicant, or as to the origin, sponsorship or approval of Applicant's goods and other commercial activities, all to Opposer's detriment, thereby causing Opposer damage. Potential customers are likely to believe that Applicant's goods originate from, or are sponsored or approved by, Opposer, when such is not the case.

8. Applicant is not affiliated with or connected in any way to Opposer, and Opposer has not consented to Applicant's use of Opposer's ROTATIONAL THERAPY Mark.

9. If Applicant is granted the registration herein opposed, it would thereby obtain a *prima facie* exclusive right to the use of the ROTATION SKIN THERAPY mark, which would be a further source of damage to Opposer.

10. WHEREFORE, Opposer believes that it will be damaged by the registration of the applied-for-mark ROTATION SKIN THERAPY, and prays that this Opposition be sustained, that Application Serial No. 85/665,399 be rejected and that the mark applied for therein be refused registration on that basis.

Authorization is given to charge \$600.00 for the filing fee for this Opposition to Deposit Account No. 50-3611.

Please direct all notices, pleadings and process regarding this matter to:

Mark M. Zylka, Esq.
CUENOT, FORSYTHE & KIM
3319 State Road 7, Suite 301
Wellington, FL 33449
Tel: 561-214-6166
Fax: 561-423-9272

Respectfully submitted,

CUENOT, FORSYTHE & KIM

Date: June 8, 2013

/Mark M. Zylka/
Mark M. Zylka, Reg. No. 48,518
3319 State Road 7, Suite 301
Wellington, FL 33449
Tel: 561-214-6166
Fax: 561-423-9272
Attorneys for Opposer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and complete copy of the foregoing Notice of Opposition has been served on Grayson Beauty Advances LLC by mailing said true and complete copy on the 8th of June, 2013, via First Class Mail, postage prepaid to:

Robert A. Grayson
Director
Grayson Beauty Advances LLC
30728 Paseo Elegancia
San Juan Capistrano, California 92675-5426

A courtesy true and complete copy of the foregoing Notice of Opposition has been served on Louis C. Paul by mailing said true and complete copy on the 8th of June, 2013, via First Class Mail, postage prepaid to:

Louis C. Paul, Esq.
Louis C. Paul & Associates, PLLC
150 East 58th Street, 34th Floor
New York, NY 10155

/Mark M. Zylka/
Mark M. Zylka